



Commonwealth  
of Massachusetts

## *OCPF Online*

*www.mass.gov/ocpf*

*Office of Campaign and Political Finance*

*One Ashburton Place, Room 411*

*Boston, MA 02108*

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### Advisory Opinion

October 29, 2004

AO-04-17

Emmanuel A. Bellegarde  
717 Walk Hill Street  
Mattapan, MA 02126

Re: Political Fundraising by Public Employee on Leave of Absence

Dear Mr. Bellegarde:

This letter is in response to your request for an opinion regarding the extent to which, under the Massachusetts campaign finance law, you may engage in political activity having taken a leave of absence from your government job.

You have stated that you intend to form a political committee in order to promote your election to the office of State Representative in the event that the 12<sup>th</sup> Suffolk District seat becomes vacant at the end of Representative Thomas Finneran's current term. In order to prepare for the campaign, you have recently taken a leave of absence from your position as the constituent services representative for Senator Jack Hart.

#### QUESTION

Under the circumstances set forth above, what restrictions, if any, apply to your ability to participate in your campaign?

#### ANSWER

Assuming that the leave of absence that you have taken is unpaid, without benefits and is for a period of at least four months before the special election primary and six months before the special election, the general prohibition against political fundraising by appointed public employees would cease to apply to you during such a leave. Accordingly, there would be no restrictions on your ability to fully participate in your campaign during the time you are on such a leave.

#### DISCUSSION

Section 13 of the Massachusetts campaign finance law, M.G.L. c. 55, provides, in part, that no individual "employed for compensation, other than an elected officer" by any state, county or local

government entity may directly or indirectly solicit or receive any money or other thing of value for any political purpose whatsoever. This restriction applies to all paid appointed public employees, including those running for office. In AO-02-07, this office stated:

Section 13 does not mean that a public employee must relinquish his or her employment to participate in a political campaign. The office has determined that a public employee who takes an unpaid leave of absence *of at least four months* before a primary election or at any other time other than during the six months before a general or special election, *or a leave of six months before a general or special election*, is not considered "employed for compensation" during the leave of absence. During the leave of absence the employee is not subject to the prohibitions of Section 13. See AO-96-28 and AO-91-24. Such unpaid leave of absence may not include any paid vacation, compensatory or sick time to which a public employee may be entitled. See AO-90-12.

As stated above, the legislative seat that you anticipate running for continues to be held by Representative Finneran, who will presumably serve out the current term. In the event the former Speaker is re-elected to his legislative seat in November and declines the seat or otherwise resigns from the House of Representatives at the onset of the next term, a special election could be scheduled after the Legislature convenes in January. Taking into account the time required by the Secretary of the Commonwealth to carry out the nomination process and to allow for sufficient campaign periods, it is likely that a special election could be scheduled sometime in the spring of 2005.

Under the circumstances, it would appear that you have taken leave from your position with Senator Hart's office sufficiently in advance of any potential special election to ensure that you will be separated from public employment for at least four months before the primary election and six months before the special election. Accordingly, M.G.L. c. 55, § 13 would not preclude you from soliciting political contributions for the duration of the leave.

This opinion is issued within the context of the Massachusetts campaign finance law and is provided solely on the basis of representations in your letter. In the event a special election is scheduled to fill the 12<sup>th</sup> Suffolk House seat within six months of your leave date, you should contact OCPF for further guidance.

Please contact us if you have further questions regarding this opinion or any other campaign finance issue.

Sincerely,

A handwritten signature in dark ink, reading "Michael J. Sullivan", is written over a horizontal line.

Michael J. Sullivan  
Director